

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

AMERICAN METALS & COAL
INTERNATIONAL, INC.,
a Delaware corporation,

Plaintiff,

v.

CIVIL ACTION NO. 2:05-cv-00822

WHITE MOUNTAIN MINING CO., LLC, et al.,

Defendants.

SCHEDULING ORDER

Pursuant to *Fed. R. Civ. P.* 16(b) and the *Local District Court Rules*, the court **ORDERS**:

1. Scheduling Conference: The court **CANCELS** the scheduling conference previously set for **March 23, 2006**.
2. Joinder and Amendments: Motions to join other parties or to amend the pleadings shall be filed by **June 1, 2006**.
3. Discovery: The parties shall complete all discovery requests and responses by **December 1, 2006**. “Complete discovery” as used in *Fed. R. Civ. P.* 16(b) means that all discovery, objections, motions to compel and all other motions and replies relating to discovery in this action must be filed in time for the party or parties objecting or responding to have opportunity to make responses. The term “all discovery” as used in the preceding definition includes disclosures required by *Fed. R. Civ. P.* 26(a)(1), (2), and (5), but not disclosures required by *Fed. R. Civ. P.* 26(a)(3).

Pursuant to *L.R. 26.2(c)*, the court adopts and approves agreements of the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and depositions).

4. Expert Witnesses: The party bearing the burden of proof on an issue shall make the disclosures of information required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **September 28, 2006**. The party not bearing the burden of proof on an issue shall make the disclosures required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **October 19, 2006**. All parties shall provide the disclosures required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under *Fed. R. Civ. P.* 26(a)(2)(B), no later than **November 9, 2006**.

5. Dispositive Motions: All dispositive motions, except those filed under *Fed. R. Civ. P.* 12(b), together with depositions, admissions, documents, affidavits or other exhibits, and a memorandum in support of such motions shall be filed by **January 16, 2007**. Any response shall be filed within 14 days of the filing of the motion, with replies due within 7 days of the filing of the response.

6. Settlement Meeting and *Fed. R. Civ. P.* 26(a)(3) Disclosures: No later than **January 25, 2007**, counsel and any unrepresented parties shall meet to conduct settlement negotiations. Lead trial counsel for the plaintiff(s) shall take the initiative in scheduling the meeting; all other counsel shall cooperate in the effort to achieve a successful negotiation and settlement. The parties must be prepared at the pretrial conference to certify that they tried to settle the case. If the case is not settled at the meeting and if there is no order or stipulation to the contrary, counsel and unrepresented parties shall make all *Fed. R. Civ. P.* 26(a)(3) disclosures at the settlement meeting.

7. Proposed Integrated Pretrial Order: Counsel for the plaintiff(s) shall prepare their portion of the pretrial order and submit it to counsel for the defendant(s) no later than **February 1, 2007**. Counsel for the defendant(s) shall prepare and file a proposed integrated pretrial order no later than **February 8, 2007**. The proposed integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in *L.R. 2.04(b)*, including any objections to *Fed. R. Civ. P. 26(a)(3)* disclosures.

8. Pretrial Conference: A final pretrial conference shall be held on **February 15, 2007, at 9:00 a.m., in Charleston**. Lead counsel and any unrepresented parties shall appear fully prepared to discuss all aspects of the case. Individuals with full authority to settle the case shall be present in person. Following the pretrial conference, the court shall enter a final pretrial order, which shall only be modified to prevent manifest injustice.

9. Proposed Charge to Jury: No later than **February 27, 2007**, counsel and any unrepresented parties shall submit to the presiding judge, in writing and by e-mail, proposed jury instructions in narrative or charge form on substantive theories of recovery or defense, on damages, and on evidentiary matters peculiar to the case, and special interrogatories, if any be appropriate. The proposed instructions shall be exchanged among counsel and any unrepresented parties before their submission. The proposed instructions need not be filed with the Clerk.

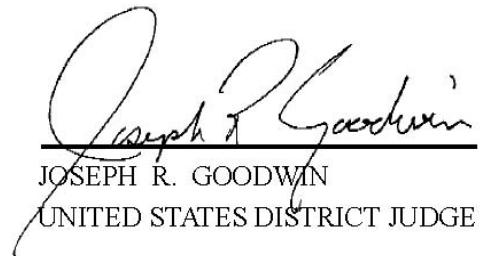
10. Final Settlement Conference: A final settlement conference, attended by lead trial counsel and any unrepresented parties, shall be held on **March 5, 2007, at 9:00 a.m., in Charleston**. Individuals with full authority to settle the case shall be present in person.

11. Trial: Trial of this action shall commence on **March 6, 2007, at 9:00 a.m., in Charleston**.

12. Failure to Appear or Negotiate: At least one attorney for each party and all unrepresented parties participating in any conference before trial shall have authority to make decisions as to settlement, stipulations and admissions on all matters that participants reasonably anticipate may be discussed. Counsel and unrepresented parties are subject to sanctions for failures and lack of preparation.

The court **DIRECTS** the Clerk to send of copy of this Order to counsel of record and any unrepresented party.

ENTER: March 16, 2006



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE